THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 2600 OF 1998

Date 26.09.2005

Between:

Ch. Buchi Reddy S/o Rami Reddy
Tirumalagiri Post & (V), Halia (M),
Nalgonda District - 508 202

..... PETITIONER

AND

The Regional Manager APSRTC
Nalgonda & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 2600 OF 1998

O R D E R:

Proceedings of the first respondent dated 09.01.1998, whereby the order of reinstatement into service, granted by the second respondent on 24.12.1997, was repealed, is impugned in this writ petition, as an order passed in violation of principles of natural justice and as being arbitrary and illegal.

Facts, to the extent necessary for this writ petition, are that the petitioner joined the service of the respondent-Corporation as Conductor on 07.08.1990. His services were terminated on 06.10.1997 for certain allegations of misconduct. Aggrieved by the order of removal, passed by the third respondent, the

petitioner preferred an appeal to the second respondent. The second respondent, by order dated 24.12.1997, directed reinstatement of the petitioner into service and imposed the punishment of deferring the annual increment, which next falls due, for a period of one year without cumulative effect besides treating the period from the date of removal till reinstated into service as not on duty. Under the said order dated 24.12.1997, the petitioner was directed to approach the first respondent for posting orders within one week from the date of receipt of the order dated 24.12.1997. On the petitioner approaching the first respondent requesting that posting orders be issued to him, the first respondent passed the impugned order dated 09.01.1998 repealing the order passed by the second respondent and confirming the order passed by the third respondent. On the ground that the said order dated 09.01.1998 as passed was in violation of principles of natural justice, the petitioner approached this Court. This Court, by order dated 03.02.1998, suspended the impugned order passed by the first respondent on 09.01.1998. The interim order of suspension was made absolute on 11.09.1998, and as a result the petitioner continues to remain in service.

Sri V.Narasimha Goud, learned counsel for the petitioner, while conceding that the first respondent had the power, under Regulation 29 of the APSRTC Employees (CC&A) Regulations, 1967 (for short 'Regulation'), to revise any order, would refer to proviso (1) of Regulation 29, whereunder, an order imposing or enhancing a penalty can only be passed after giving an opportunity of making a representation to the employee concerned. Learned counsel would submit that since the impugned order was passed under Regulation 29 without providing such opportunity to the petitioner, the order passed was in violation of principles of natural justice and contrary to the statutory regulations governing employees of the Corporation and is liable to be set aside.

Regulation 29 reads as under:

> "The authority higher than the authority to which an appeal against an order imposing any penalties specified in reg. 8 of APSRTC Employees (CC&A) Regulations, 1967 lies as specified by the Corporation by a resolution may of its own motion of otherwise call for the records of the case in a disciplinary proceedings revise any order in such case and pass such orders as it deem fit as if the employee had preferred an appeal against such order, provided that,
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> i. An order imposing or enhancing a penalty shall not be passed under

the employee concerned has been given an opportunity of making any representations which he may wish to make against such enhanced penalty; and

ii. If the authority as above proposes to impose any of the penalties specified in items (viii), (ix) of Reg. 8 in case when an enquiry in accordance with the provisions of clause 2 to 14 of Reg. 12 has not been held, it shall subject to the provisions of Regulations 13, direct that such enquiry be held and thereafter a consideration of the proceedings of such enquiry, pass such other order as it may deem fit.

iii. No action under this regulation shall be initiated more than 6 months after the date of order to be revised.

It is clear therefrom that while the first respondent has the power to revise the orders of the second respondent, such power, in cases where the penalty is sought to be enhanced, can only be exercised after the employee concerned is given an opportunity of making representation against such enhancement of penalty. It is not in dispute that the petitioner was neither put on notice regarding the proposal to revise the order enhancing the penalty, from that of deferment of annual increment without cumulative effect for a period of one year to that of removal from service nor was he given an opportunity to make any representation in this regard. The impugned order is not only contrary to proviso (1) of Regulation 29, but is also in violation of principles of natural justice and as such is hereby set aside.

It is, however, made clear that this order shall not preclude the respondents from taking action against the petitioner in accordance with law after complying with the procedure prescribed under Regulation 29.

The writ petition is accordingly disposed of. There shall be no order as to costs.

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26.09.2005

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